THE JEWS AND THE ENGLISH LAW.

(*Continued from Vol. XVI, p.* 649.)

VII.

At the time of the Restoration there were some thirty families of Jews in England[1], and these naturally awaited with expectation the promise of the king, given through General Middleton, "to abate that rigour of the law which was against them," and welcomed the declaration of a Liberty to tender Consciences which had been made at Breda. But they had many enemies to reckon with—religious fanatics at a time when no one was thought religious unless fanatical, and trade rivals who, thinking that every transaction of the newly-settled foreign merchants was a loss to themselves, looked with a jealous eye on the large and increasing foreign and colonial trade of the Jews, especially that with the recently-acquired colonies in the West Indies. Accordingly it creates no surprise to find that a number of petitions were presented to the king and the Privy Council praying that the laws against the Jews should be enforced, and that, if necessary, new ones should be enacted. At the meeting of the Privy Council on November 30 such a petition from Sir William Courtney and others was read, and it is plain from the Council's minutes that several other petitions had also been received. The petition of Sir William Courtney is probably the document preserved in the State Papers under the title "Remonstrance concerning the Jews," and dated November, 1660. It recites, apparently taking Prynne's *Demurrer* as a guide, the mischief said to have

[1] See the Da Costa lists published in Wolf's *Jewry of the Restoration*, p. 4.

been done by the Jews in former times and their banishment under Edward I, and how they have "by little and little and by degrees crept and stolen into England again, and together, some as Jewes aliens and others as English, are become of late exceeding numerous, and how they became so is conceived to be by the means of the late Usurper, who most apparently did protect and countenance them in their affairs and actions," and suggests the issue of a commission to inquire into their state, the imposition of heavy taxes, seizure of their property, and their banishment for residing here without a licence from the crown [1]. The Council having heard this petition read resolved that it, together with others on the same subject, should be taken into consideration again on December 7. On that day there were read at the Council a petition of the merchants and tradesmen of the City of London for the expulsion of the Jews, and also a petition of Maria Fernandez Carvajal (widow of Antonio Fernandez Carvajal already mentioned, who had died in November, 1659) and other merchants, Jews by birth, for his majesty's protection to continue and reside in his dominions. The latter petition has unfortunately been lost; the former is probably the petition of the Lord Mayor and Aldermen preserved in the Guildhall archives; it requested the king "to cause the former laws made against the Jews to be put in execution, and to recommend to the Two Houses of Parliament to enact such new ones for the expulsion of all professed Jews out of your Majesty's dominions, and to bar the door after them with such provisions and penalties as in your Majesty's wisdom shall be found most agreeable to the safety of Religion, the Honour of your Majesty, and the good and welfare of your subjects [2]." The Council, judging the business of very great importance, referred all the petitions to the consideration of Parliament, desiring advice therein, and ordered them to be delivered to a member of

[1] *S. P. Dom. Car. II*, vol. XXI, p. 140; *Calendar*, 1660, p. 366.
[2] *Remembrancia*, vol. IX, p. 44.

the House of Commons to be accordingly presented to the Parliament[1]. Though the Privy Council did not itself come to any decisive conclusion on the subject, it seems that the intention was to uphold the king's promise and not to molest the Jews, for on December 17 Mr. Hollis, no doubt under orders from the Council, presented the above-recited order to the House of Commons as specially recommended to them for their advice therein, touching *Protection* for the Jews. The House thereupon decided to take the business into consideration the next morning[2]. The next morning, however, the matter seems to have been shelved, for there is no entry in the journal of anything having been done, and a few days afterwards (Dec. 24) Parliament was dissolved without ever having given their advice on the Jewish problem as they had been requested by the Council. From the general temper of the House of Commons on religious questions during this reign it is clear that no relaxation of the law was to be effected by legislation in favour of the Jews, and the subject was not again brought forward in Parliament for a period of more than ten years. The position of the Jews, though unsatisfactory, was by no means intolerable; the laws against Recusants were not very strictly enforced against them, and their place of worship, if they had already one, was not known, and they therefore escaped all proceedings for taking part in illegal forms of public worship. On the other hand, the new Navigation Act had securely closed all the colonies and plantations against foreign merchants and factors, but this obstacle was surmounted by applying for and in many cases obtaining letters of denization from the king[3]. As early as the year 1662 they were emboldened

[1] *Privy Council Register, Charles II*, vol. II, pp. 57, 67.

[2] *Com. Journal*, vol. III, p. 209.

[3] The Navigation Act is 12 Car. II, cap. 18. See sec. 2, which, being passed by the Convention Parliament, was expressly confirmed by the following Parliament. See 13 Car. II, cap. 14. Mr. Webb, in an appendix to the *Question, &c.*, gives a list of 105 Jews who received letters of denization in this and the following reign, and this list is not exhaustive.

to erect a synagogue. There is the doubtful reference to a synagogue in *The Great Trapanner of England Discovered*, published in 1660, which has already been referred to; but in a letter dated April 22, 1662, and written by Jo. Greenhalgh to his worthy friend Thomas Crompton, minister of Astley chapel, we have the description of a visit to the Jews' synagogue and the form of worship held there. It is plain that the synagogue was a separate building formed no doubt out of a private house and arranged in very much the same manner as synagogues are at the present day, the service also being very similar, lasting some three hours and conducted wholly in Hebrew. It was necessary to observe the strictest secrecy, nor was any one admitted to the building, which was in "a private corner of the city," and had three doors, one beyond another, except very privately. Mr. Greenhalgh himself had some difficulty in going to it. He had an idea that the Jewish merchants in the city must have some place of meeting together for divine worship, and was curious to see it. "Whereupon as occasion offered me to converse with any that were likely to inform me, I enquired hereof, but could not of a long time hear or learn whether or where any such thing was;" but, having taken to the study of Hebrew, he obtained as a teacher a learned rabbi named Samuel Levi, who gave him a ticket of admittance to the synagogue. We may judge the size of the congregation by the writer's statement that in the synagogue he counted "about or above a hundred right Jews and one proselite amongst them[1]." It soon became no longer necessary to maintain this strict secrecy. In

There is a curious petition for naturalization of about this date (1661) of Jacob Joshua Bueno Henriques among the *State Papers Colonial*, vol. XV, No. 74. He says he had heard of a gold mine in Jamaica, and desired permission to go there and develop it, giving the king ten per cent. He also asks for naturalization for himself and his brothers Joseph and Moses, and that they may follow their own laws and have synagogues. (See *Calendar, S. P. Colonial*, 1661-8, p. 48, and *Jews in the British West Indies*, by Dr. Friedenwald: pub. American Jewish Hist. Soc., No. 5, p. 45 seq.)

[1] Ellis's *Original Letters*, 2nd series, vol. IV, Letter cccix, pp. 3-22.

the absence of any documentary evidence it is not safe to assume that a special dispensation was given by the king to the Jews by reason of that dispensing power which he conceived to be inherent in him, but it may well have been given, and if not it is most reasonable to suppose that reliance was placed on the king's declaration to all his loving subjects, which, as before stated, was published on December 26, 1662. At any rate it is quite certain that the worship of the synagogue, which had hitherto been conducted with the greatest privacy, was shortly after this time no longer concealed, but open to the public; and for a time at any rate without any evil consequences to the worshippers. On October 14, 1663, Samuel Pepys and his wife and his friend Mr. Rawlinson paid a visit to the synagogue after dinner, where they were present at what was evidently the afternoon service for the rejoicing of the law. There was no difficulty as to admission, and no attempt at concealment. The clerk of the acts of the navy remarks upon the disorder, want of attention and confusion in the service, and observes that he could not "have imagined there had been any religion in the whole world so absurdly performed as this[1]." It was in the course of this year that the hitherto isolated Jewish families formed themselves into a community. Henceforth regular records were kept; the synagogue, in addition to being made public, was renovated and improved, and in 1664 a lease was taken; in September, 1663 the *Finta*, or contributions of the individual members of the synagogue, was fixed, and in the following November the *Ascamoth*,

[1] *Diary of Samuel Pepys*, Oct. 14, 1663, Wheatley's edition, vol. III, p. 303. This description of a visit to the Synagogue gives an impression which was shared by other Christian observers; see the autobiography of Henry Newcome, M.A., A.D. 1686, "*June* 26. We went to the Jews' Synagogue. I could not have believed, but that I saw it, such a strange worship, so modish and foppish; and the people not much serious in it as it is. And I was affected to think, that many likely men of understanding should be without Christ, and live in the denial of him." Chetham Society's Publications, vol. XXVII, p. 262.

or code of laws to govern the newly-founded community, was drawn up; it was published in April, 1664, and in the same month a *Haham*, or Chief Rabbi, was appointed; the whole organization being completed by April 19, 1664[1]. It was not likely that the public exercise of a strange religion should long remain unnoticed, and the passing of the Conventicle Act, which expressly declared that the Elizabethan legislation against Recusants was still in force and ought to be put into execution, invited an attack upon the Jews. It was not long delayed. The Conventicle Act came into force on July 1, 1664. And immediately afterwards we hear of a Mr. Rycaut molesting the heads of the congregation, suggesting that they were liable to all sorts of penalties and forfeitures, and what was worse, the Earl of Berkshire, the second son of that Earl of Suffolk in fear of whom the Jews had fled the country in the reign of James I, who held a high position at court, being a gentleman of the bedchamber and privy councillor[2], intervened, saying he was verbally authorized by the king to protect them, but threatening that unless they came to a speedy agreement with him, he would himself prosecute them and procure the seizure of their estates. In these circumstances the wardens of the synagogue, the first that had been yet appointed, took the only course open to them, and petitioned the throne direct. With great wisdom they omit all mention of the religious question and the infringement of the newly-enacted law, but say they know of no law to hinder their residence in the kingdom, and ask to be allowed to remain under the protection of the law until his majesty should think fit to order them to depart, and promise to be loyal and obedient subjects of the king. The petition was referred to the Privy Council on August 22, 1664. A most generous answer was returned. The king declared that he had

[1] Gaster's *History of the Ancient Synagogue*, pp. 7, 9–11, 17; Wolf's *Jewry of the Restoration*, pp. 13–15.

[2] See Cockayne's *Peerage*, vol. I, p. 343.

given no orders for molesting or disquieting the petitioners, and that they might "promise themselves the effects of the same favour as formerly they had had, so long as they demeaned themselves peaceably and quietly with due obedience to his Majesty's Laws, and without scandal to his government[1]." The concession was of great importance; it was a formal recognition of a system of public worship which had been established for more than a year in open defiance of the Elizabethan statutes enforcing uniformity, and was given at the very time when Parliament had declared that those statutes should be carried out, and had even added to their severity by the enactment of the Conventicle Act. The king's claim to grant dispensations from penal laws had not yet been questioned in Parliament, and this particular dispensation granting the Jews the same favours they formerly had had, and by implication including the right of public worship which they had of late openly exercised, was never disputed in the legislature. Even assuming an express dispensation had been given to the Jews after Christmas, 1662, the new declaration was necessary to enable them to escape the severe penalties of the new Act which had just come into force.

For some years the synagogue was kept open and the services regularly held without molestation. On February 6, $167\frac{0}{1}$, the House of Commons thought fit to take this matter into their consideration. There was a scheme on foot to prevent the growth of Roman Catholicism, and in case legislation should be introduced, it was thought a good opportunity to aim a blow at Judaism also. It was accordingly ordered "that a Committee be appointed to inquire into the causes of the growth of Popery; to prepare and bring in a bill to prevent it, and also to inquire touching the number of the Jews and their Synagogues, and upon what terms they are permitted to have their residence here, and report it with their opinions to the

[1] *S. P. Dom. Car. II*, ent. Book 18, pp. 78–9; *Calendar*, 1663–4, p. 672.

House[1]." Either from want of time or knowledge, or because the subject was not thought of sufficient importance, the part of the reference relating to the Jews does not seem to have been proceeded with; the Committee's report, which was presented to the House on February 17, dealt only with the causes of the increase of Popery, and it was resolved that an address requesting a proclamation for the banishment of priests and Jesuits, and the enforcement of the laws against Recusants, should be drawn up and presented to the king; whose answer to this address excepting those who served his father and himself faithfully in the late wars has been already mentioned.

For the time being, then, the Jews were left undisturbed; nor were they concerned with the publication of the Declaration of Indulgence in the spring of 1672, for, for nearly nine years before that time they had openly exercised the right of public worship which was conferred by that instrument on all Nonconformists except Papists. But the cancelling of the declaration in the following year gave occasion for a new attack upon the synagogue; the organizers of it no doubt argued that the withdrawal of the general indulgence of itself annulled the particular dispensation granted to the Jews, which, though previously acted upon, was evidenced and confirmed by the king's answer to their petition given on August 22, 1664. Accordingly, at the winter quarter sessions of 1673 at the Guildhall, the leaders of the Jewish community were indicted of a riot for meeting together for the exercise of their religion in Duke's Place, and a true bill was found against them by the grand jury. The Jews again petitioned the king, referring to the favourable reply they had received in 1664; and, as was seen in the first of these articles, on February 11, 167$\frac{3}{4}$, an order was made by the King in Council "that Mr. Attorney General do stop all proceedings at law against the Petitioners who have been

[1] *Com. Jour.*, vol. IX, p. 198.

indicted as aforesaid and do provide they may receive no further trouble in this behalf[1]."

The method by which the Attorney General is able to stop proceedings in a criminal trial is by entering a *nolle prosequi*—a course which before these times was not unusual in the case of informations or prosecutions commenced by a representative of the crown. About this very time the system was extended to indictments or prosecutions commenced by any member of the public without the necessity of any intervention or permission from the representative of the crown as a convenient way of exercising that dispensing power which the king thought inherent in his office[2]. It is somewhat remarkable that though Parliament was sitting at the time, and the king's power of suspending penal statutes in matters ecclesiastical had recently been questioned, no protest against this particular dispensation in favour of the Jews was made in either House; this may, however, be accounted for by the fact that Parliament was prorogued within a fortnight of the issue of the Order in Council, which may not have been generally known till some time afterwards. The measure of favour now shown the Jews was a distinct advance upon the proceedings of 1664. In the earlier year a vague promise of protection had been given upon condition that the laws of the land were duly obeyed. The formal Order in Council made ten years later effectually saved the young community from the consequences of undoubted infringements of the laws then in existence. The king could not make the celebration of an unauthorized religious service legal, but he could and did, by the exercise of his dispensing

[1] Hag., *Cons. Cas.*, vol. I, Appendix, p. 2.

[2] In Goddard *v.* Smith (1764), 8 Mod. *Rep.*, p. 264, Chief Justice Holt says that it began first to be practised in the latter half of King Charles the Second's reign, but that on informations it had been frequently done, and he ordered precedents to be searched if any were in Mr. Attorney Palmer's or Nottingham's time. And on another day he declared that in all King Charles the First's time there is no precedent of a *nolle prosequi* on an indictment.

power in this formal way, render those who took part in it immune from the penalties of the law which they were habitually violating. Indeed, shortly after this event, the leaders of the community thought themselves so far secure that during this year they took the lease of a house in Creechurch Lane for a term of twenty-five years, and established there a larger and more commodious synagogue[1]. Nor was their confidence without justification, for no further attack was made upon them during the remainder of the reign.

It is well to pause here and glance at the progress made since the king's return. The resettlement, towards which, in spite of several sustained but unsuccessful attempts, no real advance had actually been made during the Commonwealth, was now actually effected, and, if the policy of Charles were confirmed by his successors, legally complete. At the time of the Restoration, Jews, though they might enter the country as freely as other aliens, were yet in no better legal position than they had been in the days of James I; they were subject to heavy fines if they did not regularly attend the Christian services of their neighbours, and were under still severer penalties debarred from setting up a synagogue of their own. It was impossible to establish a settled community or even to meet together for Jewish religious purposes except under the cover of the strictest secrecy. Those who were here are rightly called by Mr. Wolf Crypto-Jews, for they were unable to openly profess their allegiance to Judaism. The king, who in his exile had promised to abate the rigour

[1] Gaster's *History of the Ancient Synagogue*, p. 7. Creechurch Lane is in close proximity to Duke's Place, but the extreme accuracy required in an indictment shows that in 1673 the house of prayer was at Duke's Place itself. Neither Pepys nor Greenhalgh indicates the locality of the synagogue, but it was probably the same house in Duke's Place which was still used in 1673. In the old synagogue in Duke's Place, according to Greenhalgh, the women worshipped in an inner room; in the newer synagogue in Creechurch Lane there was a separate gallery and entrance for ladies.

of the law that was against them, proved as good as his word. At the very beginning of his actual reign we have the earliest reliable evidence of a meeting-place for public worship according to Jewish rites. At first these services, though open to all Jews, were carefully concealed from the general public; yet after a lapse of three years it was possible to hold them openly; and the criminal proceedings which were threatened, or actually took place in consequence, were prevented or rendered abortive by the intervention of the king, and by the year 1674 the community, already firmly established, was able to obtain a long lease of a house, and especially reconstruct it for the purposes of a synagogue. No less than seventy members of the new congregation were granted during the reign letters of denization, and thus acquired the rights of English citizenship. Questions concerning the customs and rights of Jews, as would necessarily happen as soon as an actual settlement took place, now for the first time were discussed and decided in the courts of law—for instance, it was held that a Jew should be sworn on the Old Testament in legal proceedings whether at common law or in chancery; that it was right to alter the venue in a case where a Jew would be a necessary witness so that it should not be heard on Saturday, the Jewish Sabbath, and that a Jew might maintain an action in this country unless expressly prohibited by the king from carrying on trade here[1]. Under the aegis of the king, and protected by the exercise of his dispensing power, a Jewish community had been practically established, requiring only the like recognition and protection from succeeding monarchs to make itself permanently and legally secure.

On February 6, 168$\frac{4}{5}$, Charles II died, and his brother James was proclaimed king. The new sovereign was from the first determined that the crushing disabilities under

[1] See the cases of Robeley *v.* Langston (1667), 2 Keble, p. 314; and Anon. (1683), 1 Vern., p. 263; Barker *v.* Warren (1675), 2 Mod., p. 271; and case in Lilly's *Practical Register*, vol. I, p. 4 (1684).

which his fellow Papists laboured should no longer press upon them, and was quite willing to give similar relief to other Dissenters. In his speech made to the Privy Council at the time of his proclamation as king he promised "to preserve the government both in Church and State as it is now by law established," and to defend and support the Church of England. On March 5, to the great grief of all Protestants, mass was publicly said at Whitehall [1], but in his speech at the opening of Parliament on May 22, the king repeated the promise he had made to preserve the government both in Church and State. This assurance, it is plain, did not give universal satisfaction, for, fashionable as it was in those early days of his reign to profess unbounded confidence in the king, there was still some misgiving and jealousy of the royal power in religious matters which was bound to find expression. On May 27, the grand committee for religion reported that they had agreed upon two resolutions, of which the second was "That the house be moved to make an humble Address to his Majesty to publish his royal Proclamation for putting the laws in execution against all Dissenters whatsoever from the Church of England." This resolution gave great offence at court, and the court party in the House managed to defeat it by moving the previous question, which was carried, and the following motion was then unanimously adopted: "That this house doth acquiesce, entirely rely, and rest wholly satisfied in his majesty's gracious word and repeated Declaration, to support and defend the Religion of the Church of England, as it is now by law established; which is dearer to us than our lives [2]." Though no proclamation was issued, an attempt was a short time afterwards made to enforce the penal laws against the Jews; for one Thomas Beaumont issued process under the statute made in the 23rd year of Queen Elizabeth, which inflicted

[1] Evelyn's *Memoirs*, vol. I, p. 551.

[2] *Commons Journals*, vol. IX, p. 721; *Parl. Hist.*, vol. IV, p. 1357.

a penalty of £20 a month for non-attendance at church, against no fewer than forty-eight Jews, of whom thirty-seven were arrested "as they were following their occasions on the Royal Exchange"; whereupon Joseph Henriques, Abraham Delivera, and Aaron Pacheco, the overseers of the Jewish synagogue, presented a petition to the King in Council praying "his Majesty to permit and suffer them as heretofore to have the free exercise of their religion, during their good behaviour towards his Majesty's Government." King James, following his brother's example by a formal Order in Council, exercised his dispensing power in favour of the Jews by ordering the Attorney-General to stop all the proceedings against them; "His Majesty's intention being" (so the order runs), "that they should not be troubled upon this account, but quietly enjoy the free exercise of their religion, whilst they behave themselves dutifully and obediently to his government[1]."

This Order in Council was made on November 13, 1685, at the very time when Parliament, newly reassembled after the suppression of Monmouth's rebellion, was questioning the power of the king to retain in his service Roman Catholic officers who had served against the rebels by granting them dispensations from the Test Act. In his speech to both Houses, at the resumption of the session on November 9, James openly expressed his intention of continuing them in their employment, saying: "And I will deal plainly with you, that after having had the benefit of their service in such time of need and danger, I will neither expose them to disgrace, nor myself to want of them, if there should be another rebellion to make them necessary for me[2]." On November 14 the House of Commons resolved to present an address dealing with this matter which, when finally drawn up and adopted, ran as follows: "We further crave leave to acquaint your Majesty that we have with all duty and readiness taken into consideration your Majesty's

[1] Hag., *Cons. Cas.*, Appendix, p. 3.

[2] *Commons Journals*, vol. IX., p. 756; *Lords Journals*, vol. XIV, p. 73.

gracious speech to us, and as to that part of it relating to the officers in the Army not qualified for their employments according to an Act of Parliament made in the twenty-fifth year of the reign of your Majesty's Royal Brother of blessed memory, intituled an Act for preventing dangers which may happen from Popish Recusants, we do out of our bounden duty humbly represent unto your Majesty, that these officers cannot by law be capable of their employments; and that the incapacities they bring upon themselves thereby can no ways be taken off but by an Act of Parliament: Therefore out of that great deference and duty we owe unto your Majesty who has been graciously pleased to take of their services to you, we are preparing a Bill to pass both Houses for your royal assent to indemnify them for the penalties they have now incurred. And because the continuance of them in their employments may be taken to be a dispensing with that Law, without Act of Parliament (the consequence of which is of greatest concern to the rights of all your Majesty's dutiful and loyal subjects and to all the laws made for the security of their religion) we therefore, the knights, citizens, and burgesses of your Majesty's House of Commons, do most humbly beseech your Majesty, that you would be graciously pleased to give such directions therein, that no apprehensions or jealousies may remain in the hearts of your Majesty's good and faithful subjects." A motion was made that the concurrence of the Lords be desired to the said Address, but was rejected by 212 votes to 138. And so, as had happened in the year 1673, the denial of the dispensing power of the Crown was embodied in a resolution of the Lower House only. The Lords, however, did not desire to be left behind in this matter, for on Thursday, November 19, they resolved "that Monday next be appointed for reading and considering His Majesty's speech." But in the meantime the king, who had been highly incensed with the Commons Address when presented to him, and had expressed dissatisfaction and surprise at their want of confidence in him, prorogued Parliament,

which never met again for the transaction of business during his short reign [1].

The struggle was now transferred from the Parliament House to the Law Courts. A decision that the king had power to dispense with the penalties inflicted by the Test Act was obtained [2], and James proceeded to make the utmost use of this judgment in his favour, but not content with granting dispensations wholesale, at length in April, 1687, he published a Declaration for liberty of conscience, suspending all the penal laws, and remitting all penalties incurred under them; allowing the free exercise of every form of religion, and announcing that the oaths of supremacy and allegiance, and the recently enacted tests, should no longer be required to be taken or subscribed by any person, "and further declaring that this royal pardon and indemnity should be as good and effectual to all intents and purposes as if every individual person had been therein particularly named or had particular pardons under the great seal." A year afterwards this Declaration of Indulgence was reissued, and ordered to be read in all churches, but now the storm, which had long been brewing, at length burst, and James was driven from his throne.

[1] *Commons Journals*, vol. IX, pp. 758, 759, 761; *Lords Journals*, vol. XIV, p. 88.

[2] The case is Godden *v.* Hales, which was decided in Easter term, 1686. The action was brought against Sir Edward Hales to recover a penalty of £500 incurred by holding the office of colonel in the army without having taken the oath required by the Test Act. The defendant, in answer, pleaded a dispensation from the Crown. Sir Edward Herbert, Lord Chief Justice of the Common Pleas, after taking time to consult the other judges, declared that he and all the other judges (except Street and Powell, who doubted) were of opinion (1) that the kings of England are sovereign princes; (2) that the laws are the king's laws; (3) therefore it is an inseparable power in the kings of England to dispense with penal laws in particular cases, and upon particular necessary reasons; (4) that of those reasons and those necessities the king himself is sole judge; (5) that this is not a trust invested in or granted to the king, but the ancient remains of the sovereign power and prerogative of the kings of England, which never yet was taken from them nor can be. And therefore, such a dispensation appearing upon record, judgment ought to be given for the defendant. See 2 *Shower*, p. 475; XI St. Tr., p. 1166 seq.

Until after the decision of Godden *v.* Hales in Easter term, 1686, the king had probably not gone beyond the law, though he had undoubtedly stretched his prerogative to its furthest limits, but his proceedings after that time are rightly regarded as wholly illegal. A special dispensation to a particular person or persons is very different from a general indemnity to all who might violate and incur penalties under the penal laws. However much we may at the present time approve of the wording and the substance of the declarations of indulgence, we cannot forget that if toleration was to be established, it could be secured only by an Act of the legislature, and not by the king alone usurping the authority of Parliament. James's hopes of success had lain in uniting all the dissenting sects against the Established Church, but the great mass of Dissenters were as vehement in their opposition as churchmen, partly because they regarded the indulgence offered them as illegal and unconstitutional, and a direct infringement of the liberties of the people and their right of legislation, and partly because they feared that the real object of placing the members of the different sects on the same footing as members of the Church of England, was, after destroying the supremacy of the Established Church, to afterwards gradually transfer it to the adherents of the Church of Rome. The Jews did not avail themselves of the Declaration of Indulgence, but for different reasons from their nonconformist brethren. They were satisfied with the dispensation granted them by Charles II, and confirmed by James II in November, 1685, for it enabled them to escape the penalties of recusancy, and also to hold public worship in accordance with the rites of their religion; nor had they any desire to take any part in the political life of the country, which under the Declaration of Indulgence they might have done. For not only were they for the most part aliens and wholly absorbed in commercial enterprises, but one of the ascamoth or laws of the synagogue strictly forbade its members from

taking any part in politics[1]—a very wise provision in the then condition of the newly-organized community. The position of the Jews therefore remained throughout the reign the same as it had been under Charles II, but lapse of time and the confirmation of the dispensation given by Charles and his successor rendered their settlement more secure, and their community was rapidly increasing, and still enjoying the royal favour, as is proved by the fact that thirty-four of its members were granted letters of denization by James II during his short reign.

The Revolution of 1688 did not affect the status of the Jews. It was indeed recognized that it was necessary to reward in some way the loyalty to the constitution of the Dissenters, who, in spite of the indulgence offered them by the deposed king, had joined entirely in the resistance to the illegal attacks on the rights and privileges of the Established Church, but it was determined that the toleration to be granted should be strictly limited. The penal laws might be divided into two classes; first those which compelled attendance at church, and punished the holding of religious services not in conformity with the ritual laid down in the book of common prayer, secondly those which disabled all who did not profess the doctrines of the Church, and join in communion with it, from sitting in Parliament, or holding any political or municipal office or any place of profit under the Crown. The gratitude felt by churchmen to their nonconformist brethren for the support rendered to the Church in her hour of need, was not strong enough to create any desire to admit them to any share of political power, and it was thought that sufficient generosity was shown in granting freedom of worship to Protestant Dissenters, and relief from the penalties incurred by absence from church. No attempt was therefore made to mitigate any of the laws falling under the second category, nor were any of those belonging to the first class amended or repealed, but, in accordance with a mode of legislation

[1] Gaster, *The Ancient Synagogue*, p. 88.

which seems peculiarly dear to the English people, the effect of disobedience was annulled by exempting Dissenters from the penalties they would have otherwise incurred. This was done by means of the statute (1 Will. & M., cap. 18) entitled "An Act for exempting their Majesties' *protestant* subjects dissenting from the Church of England from the penalties of certain laws," and generally known as the Toleration Act. In spite of its high sounding title the toleration granted was strictly limited to Protestant Nonconformists, who might take the new oaths of allegiance and supremacy, and subscribe a declaration against transubstantiation; though Dissenters, such as Quakers, "who scruple the taking of any oath," were allowed instead to subscribe a declaration of fidelity to the throne, and also a profession of their Christian belief, and it was also provided "that neither this Act nor any clause, article, or thing herein contained, shall extend or be construed to extend to give any ease, benefit, or advantage to any papist or popish recusant whatsoever, or any person that shall deny in his preaching or writing the doctrine of the Blessed Trinity, as it is declared in the aforesaid articles of religion." Dissenters entitled to the benefit of the Act were enabled to have their places of worship certified, and persons who should disturb the services held there were made liable to penalties. At the same time it was made clear that there was no intention to allow any relaxation of the strict observance of the Sunday, for by section 16 "all the laws made and provided for the frequenting of divine service on the Lord's Day, commonly called Sunday, shall be still in force, and executed against all persons that offend against the said laws, except such persons come to some congregation or assembly of religious worship, allowed or permitted by this Act." Yet, such as it is, the Toleration Act is not unjustly regarded as the charter of freedom of conscience in this country, for it in practice gave all the liberty which at the time it was intended to allow. Nonconformity was still regarded in theory as a crime, but exceptions were

introduced, which in the course of time became so numerous as to eat up the rule. The true effect of the Toleration Act is well expressed by Lord Mansfield in his speech in giving judgment in the House of Lords in the case of the Chamberlain of London *v.* Evans in the year 1767; he says, that in former days nonconformity was "in the eye of the law a crime, every man being required by the canon law, received and confirmed by statute law, to take the sacrament in the church at least once a-year, . . . but the case is quite altered since the Act of Toleration; it is now no crime for a man, *who is within the description of that Act,* to say he is a Dissenter; nor is it any crime for him not to take the sacrament according to the rites of the Church of England; nay, the crime is, if he does it contrary to the dictates of his conscience. . . . The Toleration Act renders that which was illegal before now legal; the Dissenters' way of worship is permitted and allowed by this Act; it is not only exempted from punishment, but rendered innocent and lawful; it is established; it is put under the protection and is not merely under the connivance of the law. . . . Dissenters, *within the description of the Toleration Act,* are restored to a legal consideration and capacity; and an hundred consequences will from thence follow, which are not mentioned in the Act. For instance, previous to the Toleration Act, it was unlawful to devise any legacy for the support of dissenting congregations, or for the benefit of dissenting ministers; for the law knew no such assemblies and no such persons; and such a devise was absolutely void, being left to what the law called superstitious purposes. But will it be said in any court in England, that such a devise is not a good and valid one now?" but then he adds later, "the case of 'Atheists and Infidels'" (among whom Jews are included) "is out of the present question; they come not within the description of the Toleration Act[1]."

[1] Cobbett's *Parl. Hist.*, vol. XVI, pp. 313–27.

The benefit of the Toleration Act was extended to Unitarians in the year 1813, and to the Roman Catholics, who had received considerable measures of relief by statutes passed in 1778, 1791, 1829, in the year 1832, and finally to the Jews in the year 1846, but until the reign of Queen Victoria there had been no legislative enactment exempting the Jews from the penalties of the penal laws, which were finally repealed in the years 1844 and 1846[1].

[1] In 1812 three of the most intolerant Acts passed in the reign of Charles II, namely, the Act against Quakers, the Five Mile Act, and the Conventicle Act, were repealed by the Places of Religious Worship Act, 1812 (52 Geo. III, cap. 155), which also made it necessary, under a penalty of £20, to certify and register all places for religious worship of *Protestants*, at which more than twenty persons should be present.

In 1813, 53 Geo. III, cap. 160, admitted Unitarians to the benefit of the Toleration Act, by repealing the last two lines of sect. 17, which exclude any person who shall deny the doctrine of the Blessed Trinity.

The Acts relieving Roman Catholics are (1) Sir George Savile's Act (18 Geo. III, cap. 60), which exempted Roman Catholics who took the prescribed oath, expressing allegiance to King George and disclaiming the Stuarts and the deposing power of the Pope, from many of the disabilities and penalties imposed since the Revolution by 11 & 12 Will. III, cap. 4. Catholics were henceforth allowed to purchase and inherit land, and the provisions allowing a Protestant kinsman to enter and enjoy the estate of a Catholic heir, and imposing perpetual imprisonment for keeping a Roman Catholic school, were repealed. (2) The Roman Catholic Relief Act, 1791 (31 Geo. III, cap. 32), which among other things exempted all persons who should make a declaration professing the Roman Catholic religion, and take the prescribed oath of allegiance to the king and the Hanoverian succession, from all penalties for not resorting to the parish church, and from being prosecuted for being a Papist, or for hearing or saying mass, or taking part in any other ceremony of the popish religion, provided that all places of worship should be certified, and provided also "that all the laws made and provided for the frequenting of divine service on the Lord's Day, commonly called Sunday, shall be still in force, and executed against all persons who shall offend against the said laws, unless such persons shall come to some congregation or assembly of religious worship permitted by this Act or by the" Toleration Act, i.e. a Roman Catholic or Protestant Nonconformist chapel. (3) 43 Geo. III, cap. 30, substitutes the declaration and oath prescribed in the Catholic Relief Act of 1791 for the oath prescribed in Sir George Savile's Act of 1778. (4) The Roman Catholic Relief Act, 1829 (10 Geo. IV, cap. 7), admitted Roman Catholics to full political rights, with certain exceptions, by exempting them from the provisions of the Test Acts and the Corporation Act. (5) The Roman Catholic Charities Act of 1832 (2 & 3 Will. IV, cap. 115) extended to Roman

No relief was formally given to enable Nonconformists to fill municipal, political, or military offices, from which all who did not take the Communion according to the rites of the Church of England were excluded; but after the beginning of the reign of George II such offices were practically thrown open to Protestant Dissenters by passing annual Indemnity Acts, the first of which is 1 Geo. II, st. 2, cap. 23, in favour of those who had omitted to qualify themselves under the Corporation and Test Acts. At length in the year 1828 the statute 9 Geo. IV, cap. 17, substituted a Declaration, "upon the true faith of a Christian," not to disturb or injure the Established Church for the Sacramental test, thus sweeping away all the political disabilities of Protestant Nonconformists, and in the following year the obligation to make a Declaration against transubstantiation was repealed, and Papists also, under certain conditions, were admitted to full political rights by the Roman Catholic Relief Act of 1829.

It is somewhat remarkable that, until the year 1846, no *legislative* relief from the penal laws, except in so far as some of them had been repealed in the year 1812 and the year 1844, was granted to the Jews.—The repealing Acts were not intended to benefit the Jews; but were made in favour of Protestant Dissenters and Roman Catholics respectively.—Indeed the statute passed in the last-mentioned year, which is entitled "An Act to repeal certain Penal enactments made against Her Majesty's Roman Catholic Subjects," expressly restricted the repeal of many of the statutes it dealt with, to the extent to which they related to or in any manner affected Roman Catholics. The Commission for revising and consolidating the criminal law, which was appointed in February, 1845, recommended in its first report, published three months afterwards, that the

Catholics the benefit of the Toleration Act, by making them subject to the same laws as Protestant Dissenters "in respect of their schools, places for religious worship, education, and charitable purposes." (6) 7 & 8 Vict., cap. 102, expressly repealed many of the penal enactments, so far as they "relate to or in any manner affect Roman Catholics."

clauses in the Uniformity Acts by which a penalty is inflicted for repairing to other places of worship than churches, and also those inflicting penalties on Roman Catholics, Dissenters, and Jews for professing, exercising, or promoting any religion other than that of the Established Church, and also the Laws of Recusancy, be repealed, and further that the religious worship of the Jews be protected in like manner as that of Roman Catholics and Dissenters. These recommendations were carried out in the following year by the Act to relieve Her Majesty's Subjects from certain penalties and Disabilities in regard to Religious opinions (9 & 10 Vict., cap. 59). At length, therefore, after the lapse of more than a century and a half, the Jews were formally, by a solemn Act of the legislature, admitted to the benefits of the Toleration Act, and their religion was no longer merely connived at, but was placed under the protection of the law. During this long period the Jewish question was frequently brought to the notice of Parliament, and the Jews had always both friends and enemies in that assembly; but the Jewish question never became a burning question of the day [1]. The enemies of the Jewish religion, having the letter of the law in their favour, did not feel the necessity of taking any legislative action, though they may have deplored their inability to enforce the penal laws against the Jews. The friends of the Jews, on the other hand, did not care to introduce remedial measures, which would have certainly been opposed and possibly if not probably defeated, because in fact the Jewish religion, though not sanctioned by Parliament, had under the king's dispensing power, as exercised by the Orders in Council in 1674 and 1685, all the protection that was necessary. The synagogue was always open; its worshippers were not prosecuted, and a considerable and

[1] An exception should perhaps be made of the events following the ill-fated Naturalization Act of 1753, but even then the right of public worship and the practical freedom from the penalties of recusancy were never seriously brought in question.

increasing Jewish community gradually grew up both in London and the principal commercial centres. Every year the position became more secure, and premature attempts at legislation would have only endangered it.

It cannot, however, be disputed that the Jews were deliberately excluded from the Toleration Act, for almost immediately after its passage their status was the subject of discussion in the House of Commons. In order to provide funds for the reduction of Ireland, which still held out for the Stuart king, and the vigorous prosecution of the war against France, it was resolved in the autumn of 1689 to raise an additional supply of two million pounds. On November 7, the Committee of the whole House, which was sitting to consider the means of raising this sum, recommended that a tax of one hundred thousand pounds be laid upon the Jews, and a bill for that purpose was ordered to be brought in. On November 11 the Jews presented a petition to the House of Commons against the proposed tax. The rule of the House then was that no petition against a bill imposing a tax would be entertained, or if presented entered upon the Journals of the House. This rule, founded on the assumption that as a tax extended over all parts of the kingdom, no individual should be allowed to treat it as a special grievance to himself, was not rescinded until 1842, when standing order 82, discontinuing the former usage and enabling the House to entertain such petitions, was passed. Consequently the petition and the debate upon it are not mentioned in the Commons Journals. The petition gave a very interesting account of the condition of the Jews in England at this time: stating that about the year 1654 there came six Jew families into this kingdom, which since the Restoration of Charles II had been increased to the number of between three and four score families, who had settled in the cities of London and Westminster, under the public faith and protection of King Charles II; that many of them had been made denizens by the last two kings, and that though

one half of them had moderate or indifferent estates, the other half consisted partly of persons assisting the better sort in the management of their commerce, and partly of poor people maintained by their richer brethren, and in no ways chargeable to the parish; that they paid all the taxes and fulfilled all the duties imposed upon them, and by their large commercial transactions they greatly enriched the nation, and increased the revenue from Customs: that they were wholly unable to pay the large sum proposed to be levied upon them, and could not expect any assistance from their brethren abroad; so that if the tax were proceeded with they would be utterly ruined. Though not mentioned in the petition, the rumour was spread abroad that the Jews would be forced to leave the country, and that they would remove themselves and their effects into Holland, rather than submit to the imposition[1]. On Nov. 19 the petition was delivered by Mr. Paul Foley, member for Hereford, and afterwards Speaker; and a debate as to whether it should be received ensued. It was questioned whether the Jews were subjects of the king having the right to petition Parliament, and stated that, if they were, they had no more right than their fellow subjects, and could not petition against an Aid. Sir Thomas Lee said: "Pray let not such petitions be received. You will not receive it from others, pray begin not with the Jews." And though Mr. Foley answered these arguments by declaring "I think that for the honour of the House you are to hear what they will say. When you lay a general tax on a whole kingdom, you can receive no petition against it, because all are represented here, but when there is a particular tax on men they may petition." Mr. Speaker Powle stated that he never knew a petition against a Bill before the House was seised of it, and it was decided not to receive the petition[2]. On Dec. 30 the Bill was read a first

[1] See the *Greenwich Hospital News-letter*, 3, No. 77, Nov. 12; *Cal. S. P. Dom.*, 1689, p. 318; and Luttrell's *Diary*, vol. I, p. 303.

[2] Cobbett's *Parl. Hist.*, vol. V, p. 444, and Gray's *Parl. Debates*, vol. IX, pp. 437-8.

time, and it was resolved that it should be read a second time, but it went no further, for men saw how dangerous a precedent it would be to single out for special taxation a small, defenceless, and wholly unrepresented class, which was unable to bear the burden sought to be imposed upon it. The projected tax was accordingly withdrawn [1]. Therefore the Jews did not become subject to a separate system of taxation, as in our West Indian colonies. They were, however, expected to bear the burdens of the country in the same way as their neighbours, and about this very time great disappointment was expressed that they were not ready to advance or lend, on the security of the new taxes, large sums of money for the purposes of the Government, and the Lord Mayor was actually requested by the Earl of Shrewsbury, then Secretary of State for the North, to send for their elders and principal merchants, and to impress upon them the great obligations they were under to the king for the liberty and privileges they enjoyed, and endeavour to induce them to raise the sum of £12,000, which they had offered to provide, to £30,000, or at the very least £20,000 [2]. It is probable that the response to this appeal did not come up to the expectations of the Government, and that it was partly in consequence of this that the exemption from certain of the alien duties, which had been granted in the reign of James II, and continued since the Revolution, was finally withdrawn by an Order in Council made in the October of this year [3].

On other occasions also the permanent settlement of the Jews here was recognized by Parliament, and they are more than once expressly mentioned in Acts of Parliament. The first of these Acts is 6 & 7 Will. and Mar. cap. 6, entitled "An act for granting to His Majesty certaine rates and duties upon Marriages, Births, and Burials, and upon

[1] See Macaulay's *History*, ch. xv; *Commons Journals*, vol. X, pp. 281, 319; *Calendar S. P. Dom.*, Dec. 31, 1689, p. 374; *Greenwich Hospital News-letter*, 3, No. 83.

[2] *S. P. Calendar*, Feb. 10, 1690. [3] See Tovey's *Anglia Iudaica*, pp. 287–95.

Batchelors and Widowers, for the terme of 5 years, for carrying on the War against France with Vigour." It imposed a duty of two shillings and sixpence upon the marriage of every person not in receipt of alms, and additional taxes in case of the marriage of persons of rank or property, and contained a proviso that Quakers, Papists, and *Jews*, and any other persons living together as man and wife, should be liable to the duties they would have been obliged to pay, if they had been married according to the law of England, but at the same time the Act was not to be construed as in any way making good or effectual any such marriage.

Again a few years later, in the spring of 1698, when "the Act for the more effectual suppressing of Blasphemy and Profaneness" was before Parliament, and an amendment was inserted after its return to the Lords, by which all persons openly professing the Jewish religion would have been made liable to the severe penalties it imposed; the House of Commons recognized the right of the Jews to remain here and continue the exercise of their religion by rejecting the amendment by a substantial majority. This incident is thus described by Narcissus Luttrell in his *Diary*, under the date March 22, 169$\frac{7}{8}$: "The Commons yesterday divided about a clause in the bill against prophanesse, relating to the Jews, who deny Jesus Christ; 144 were for it, and 78 against it: so the clause was added that the Jews shal not be molested[1]."

The next occasion on which this subject was raised in the legislature was in the year 1702, when the Act to oblige the Jews to maintain and provide for their Protestant children was passed. The way in which this statute was put in operation has already been described in the second of these articles, and calls for no further comment, but it

[1] The *Commons Journals* give the numbers as 140 and 78. In reality no clause was added, but the words which had been struck out by the Lords were restored to the Act. See the second of this series of articles, *J. Q. R.*, vol. XIII, pp. 275–80.

may be advisable to recall the circumstances which led to its enactment. A few years earlier the Commons had rejected the Lords' amendment to the Act against Blasphemy and Profaneness, on the express ground that it would drive the Jews out of the country, and so deprive them of the means of being rightly instructed in the principles of the true Christian religion. It soon became clear that this desire of gaining proselytes would not be gratified to any great extent if the converts were exposed to financial ruin, nor, as there was not in those days a rich and highly endowed society for the promotion of Christianity among the Jews, were the conversionists prepared to support a burden which they had reasonable hopes of removing to other shoulders. In the year 1701 a case arose which gave an opportunity for introducing legislation. In May of that year Mary Mendez de Breta, a girl nearly eighteen years of age, who had been brought up as a Jewess, embraced the Christian faith, and was baptized by Mr. Thorold, a minister of the Church of England. Thereupon her father, Jacob Mendez de Breta, disowned her for his child, turned her out of doors, and refused to allow her any maintenance, and she, being afraid of her father's anger, applied to the Lord Mayor for protection, and at his order the churchwardens of St. Andrew's Underhaft, in whose parish the father lived, provided for her and maintained her at the charge of the parish. The churchwardens lodged a complaint against the father at the Quarter Sessions at the Guildhall, and an order was made under the Relief of the Poor Act of Elizabeth that the father should allow her twenty shillings a-month for her maintenance, but this order was subsequently quashed by the Court of King's Bench, on the ground that there was no jurisdiction to make it[1]. A petition was then presented

[1] See the Inhabitants of St. Andrew's Underhaft *v.* de Breta, Lord Raymond's *Reports*, vol. I, p. 699. Before the Committee of the House of Commons it was stated that the allowance for maintenance was twenty shillings a-week. *Commons Journals*, vol. XIII, p. 799.

to the House of Commons by the ministers, churchwardens, and overseers of the poor of the above-mentioned parish and the five neighbouring parishes, stating that most of the Jews in London lived in their parishes, and that, "though they enjoy the protection of the government and the free exercise of their religion and grow rich, yet they bear such a hatred to our national religion, that in case any of their children embrace the same, they utterly disown them and treat them with great cruelty; an instance whereof appears by the daughter of Jacob Mendez de Breta, a rich Jew in St. Andrew's Underhaft, who being converted to the Christian Faith, he utterly disowns her for his child and refuses to maintain her; so that she is now kept by the said parish for her encouragement, suitable to her education," and praying that a bill might be brought in to oblige Jacob Mendez de Breta in particular and the Jews in general to maintain and provide for their Protestant children. The petition was at once referred to a Committee. The Committee heard a large number of witnesses on both sides, including the father himself, who said that Mary was not his daughter, but with two or three more children had been laid at his door in Portugal, and that he had maintained them purely out of charity, and further that he had never owned her as his daughter, but had always treated her as a servant, and that if she was entered in the parish books for the poll-tax as his daughter it was without his knowledge or consent. The Committee, however, found that the allegations in the petition were fully proved, and recommended that a bill be brought in according to the prayer of the petition. When the bill was read a second time a petition from several Jews, merchants in London, was presented against it, and after certain amendments had been made in the Commons, it was passed in the Lords without any amendment and almost without debate[1].

On other occasions occurring at frequent intervals before

[1] *Commons Journals*, vol. XIII, pp. 748, 798–800, 813, 839, 848, 886, 889, 895, and *Lords Journals*, vol. XVII, pp. 125, 126, 128, 131, 148.

1846 Parliament took cognizance of the presence of the Jews, generally with the view of mitigating in their favour new enactments which would have otherwise pressed heavily upon them, but it will for our present purpose be sufficient to enumerate briefly the principal of these occasions. For instance, in the year 1722, in order to place a check upon the Jacobites, many of whom were Roman Catholics, it was enacted by 9 Geo. I, cap. 24, that all persons owning land, who refused or neglected to take the oaths appointed for the security of the king's person and government, which included the oath of abjuration as framed in the reign of James I, and ending with the words "on the true faith of a Christian," should register their names and real estates before a fixed day, or in default should forfeit their lands. But, in the following year, an amending Act, 10 Geo. I, cap. 4, was passed, which allowed persons professing the Jewish religion to take the oath without the final words, in like manner as Jews are admitted to be sworn to give evidence in Courts of Justice.

Again in the year 1740 an Act was passed enabling all persons who had settled for a period of seven years in any of the British colonies in America to be naturalized, under certain conditions, without the necessity of obtaining a private Act of Parliament, by which naturalization was granted in those days, but it contained a proviso that all such persons should first receive the Sacrament of the Lord's Supper in some Protestant and reformed congregation in Great Britain or one of the colonies, except the people called Quakers, "or such who profess the Jewish religion." It was also further provided that Jews taking the necessary oaths for the purposes of this Act might omit the words "on the true faith of a Christian," in the same way as they were enabled to do under 9 Geo. I, cap. 24[1]. Thirteen years later Lord Hardwicke's Act for the better preventing of clandestine marriages (26 Geo. II,

[1] 13 Geo. II, cap. 7, repealed by the Naturalization Act, 1870; see especially secs. 2 and 3.

cap. 33), which made null and void all marriages solemnized without the publication of banns or licence, expressly excepted marriages amongst the people called Quakers or amongst the persons professing the Jewish religion, and most of the subsequent marriage Acts have contained similar exceptions. In the same year was passed the famous Jew bill (26 Geo. II, cap. 26), which permitted persons professing the Jewish religion to be naturalized by Act of Parliament without having previously taken the Sacrament. The Act passed through the House of Lords with great ease, but when it came down to the House of Commons met with strong opposition; indeed it would have possibly been wrecked in the Lower House, had not some of the enemies of the Government slackened their efforts against it, in the belief that it would cause widespread unpopularity throughout the country against the party in power. Nor was this belief ill-founded, for the storm of prejudice and fanaticism that arose during the recess compelled the Government to pass as their first effective measure of the next session an Act repealing the obnoxious Jew bill. For more than seventy years the Jews were not specially mentioned in any Act of Parliament, but they were again expressly excepted from the provisions of the marriage Acts of 1824, 1836, and 1840, and the Registration Act, 1836, provided for the due registration of Jewish marriages by the Secretary of a synagogue certified by the President of the London Committee of Deputies of the British Jews.

This brings us down to the years 1845 and 1846, when the measures of relief were granted, and the Jewish religion finally admitted to the benefit of the Toleration Act. Till then the immunity of the Jews from the consequences of the penal laws had rested on the royal dispensations granted by the king in Council in answer to the petitions of Abraham Delivera and others in 1674, and of Joseph Henriques and others in 1685, and the preceding summary of Parliamentary enactments concerning the Jews shows

that the legislature tacitly acquiesced in this particular exercise of the dispensing power formerly claimed by the Crown, nor was there any individual bold enough to challenge it by persisting in a prosecution in a court of law. This fact is not without significance, when it is remembered that the laws against recusants, though by no means uniformly enforced, had not become quite obsolete, even at the time when they were finally repealed. The Criminal Law Commissioners, in their first report published in 1845, mention a considerable number of convictions, followed by actual imprisonment of the offenders, which had recently to their knowledge taken place in different parts of the country [1]. Though never questioned in a court of law, the immunity of the Jews did in truth rest upon sufficiently sure foundations. It could not indeed be proved that any charter or formal document of exemption had been executed in their favour, but the fact of the dispensation was sufficiently evidenced by the story of the proceedings taken against them on two important occasions in two different reigns.

There can be little doubt that in the reign of Charles II, when the Jews re-established their community here, the king still retained the power of dispensing with laws, though subject to certain limits, which even in those times could not be precisely defined, but which it was generally acknowledged that James II had in the latter part of his reign undoubtedly transgressed. Accordingly it was not absolutely condemned by the Declaration of Rights, but it was thought sufficient to declare that "the pretended power of dispensing with laws or the execution of laws, by regall authoritie, *as it hath beene assumed and exercised of late*, is illegall." To prevent such abuse in the future, the Bill of Rights absolutely abolished the power, except in such cases

[1] See first report of Her Majesty's Commissioners for revising and consolidating the criminal law, note on pp. 32–3, and also Lord Brougham's remarks, *Hans. Parl. Debat.*, vol. 59, p. 815 (1841), and id., vol. 85, p. 1264 (1846).

as should be specially provided for by statute, and contained a special saving clause, providing no charter, grant, or pardon granted before October 23, 1689, should be in any way impeached or invalidated. Though the Jews had no formal charter in their possession, they could claim the final words of the Order in Council of 1685—"His Majesty's intention being that they should not be troubled upon this account, but quietly enjoy the free exercise of their religion, whilst they behave themselves dutifully and obediently to his government"—as a grant within the meaning of the proviso [1].

When the facts are properly analysed, it is difficult to suggest any other foundation for the freedom of the Jews to establish synagogues, and to absent themselves from church, than the exercise of the dispensing power of the Crown. From this an anomalous consequence of no small practical importance resulted, namely, that there never was any necessity to certify or register a synagogue in the same way as places of religious worship belonging to other Dissenting bodies. The benefit of the Toleration Act of 1688 was confined to persons who attended divine service at some place permitted by the Act, and no place for religious worship was permitted by the Act until certified to the Bishop, Archdeacon, or Quarter Sessions, and duly registered or recorded, and the Roman Catholic Relief Act of 1791 contained similar provisions for the certification and registration of Roman Catholic places of worship. Furthermore, the second section of the Places of Religious Worship Act, 1812, which is still in force, imposed a penalty of twenty pounds upon every person permitting a congregation or assembly for religious worship of Protestants, at which more than twenty persons should be present, to meet in any place occupied by him before it had been duly certified.

[1] For the dispensing power see the cases of *non-obstante*, 12 Rep., fo. 18: Thomas *v.* Sorrel (1674), *Vaughan*, p. 330, and Godden *v.* Hales (1686), 2 *Shower*, p. 475, and XI St. Tr., p. 1,166, with the notes, especially those at pp. 1,187 and 1,251, and generally Broom's *Constitutional Law*, pp. 492-506; Anson's *Parliament*, pp. 311-17; and Burnet's *Reign of James II*, pp. 458-60.

In the year 1855 the Act for securing the liberty of religious worship (18 & 19 Vict., cap. 86) considerably modified this stringent provision, by excepting from its operation assemblies for religious worship conducted by the incumbent of the parish, or a person authorized by him, and congregations meeting in a private dwelling-house, or meeting *occasionally* in a building not usually appropriated to religious worship. The second section of the same Act, by providing that the expression in the Act of 1846, Her Majesty's subjects professing the Jewish religion, in respect of their places for religious worship, shall be subject to the same laws as Protestant Dissenters are subject to, shall mean are subject to for the time being after the passing of this Act, seems to imply that at that time it was necessary to certify a Jewish synagogue. But it is certain that there was no provision for certifying a synagogue before 1846, and it is hardly consonant with the true principles of the interpretation of statutes to extend the scope of a highly penal section of an Act of Parliament in this indirect way, especially by an enactment entitled "An Act to relieve Her Majesty's subjects from certain penalties and disabilities in regard to religious opinions," the manifest intention of which was to grant relief from former burdens, but not to impose any new obligations. However, by the Places of Religious Worship Registration Act, 1855 (18 & 19 Vict., cap. 81), a Jewish synagogue *may* be certified in writing to the Registrar-General of births, deaths, and marriages, and will then be registered in due time. Although, as has been said, this course is optional and not compulsory, it is to be recommended, because it ensures the following advantages. A building so certified is exempt from uninvited interference by the Charity Commissioners, and is also, if exclusively appropriated to public religious worship, not liable to be rated for parochial or municipal purposes[1]. In

[1] See 16 & 17 Vict., cap. 137, sec. 62; 18 & 19 Vict., cap. 81, sec. 9; and 32 & 33 Vict., cap. 110, sec. 15, as to the provisions of the Charitable Trusts Act; and as to the exemption from rates, 3 & 4 Will. IV, cap. 30; 5 & 6 Will. IV, cap. 50, sec. 27; and 38 & 39 Vict., cap. 55, sec. 151.

addition, a synagogue not certified is not entitled to any of the advantages conferred by the legislature in 1846: a gift or legacy to it is void, nor can contracts to hire seats in it be enforced, or disturbers of the service be punished.

With the mention of this somewhat curious anomaly, the consequence of this method in which full legal recognition has been given to the Jewish religion, it is time to bring the foregoing inquiry to a close; nor is it necessary to recapitulate at any length the conclusions already arrived at. In the year 1290 the Jews were banished from the kingdom by royal edict, but this edict, now lost, would not avail to absolutely exclude from the country centuries afterwards Jews in no way connected with the former bondsmen of the king. From time to time isolated Jews came and lived in England, but the severity of the laws enforcing uniformity of religion was sufficient to prevent the formation of a Jewish community, and as late as the reign of James I the Jews that were here fled the country through fear of the commissioners appointed to execute the laws against Jesuits. The treaty with Spain in 1630 made it somewhat easier for Jews to settle here, by allowing them to evade some of the penalties imposed on recusants, but this advantage, such as it was, was lost by the outbreak of the war with Spain in 1656, though restored after the return of Charles II. Availing themselves of this advantage a small number of Jews settled in the country in the reign of Charles I, and at the time of the execution of that king a formal request was made for the recognition of the Jewish religion, but it was not successful, and being renewed seven years later, in spite of the fair words used and the courtesy shown to Menasseh, it again proved a failure. During Cromwell's régime nothing was done; but there is evidence that the Protector allowed some half-dozen families of persons he knew to be Jews to remain in the realm, but this was a special favour which did not enable them to form a distinct body or set up a synagogue. During his exile Charles II made a formal promise to

relax the law in their favour; but no legislation was introduced, nor, if introduced, would it have had a chance of success. But the promise was fulfilled. A considerable number of Jews received the rights of citizenship; a distinct Jewish community arose, and a synagogue was established. At first the services were kept strictly secret, for fear of the enforcement of the penal laws, but, under the protection of the king's dispensing power, before the end of 1663 it was possible to hold them with open doors, and the attacks made upon the Jews were successfully repelled. On the accession of King James II a further and last attempt was made to visit with the rigour of the law the still young and struggling community, which was again saved by the exercise of the dispensing power of the Crown. After the Revolution the power of dispensation was swept away, but it was expressly provided that charters or grants already made should not be held invalid, and the formal Order in Council of November 13, 1685, granting the Jews the free exercise of their religion, was thus confirmed. At length, in 1846, after an interval of more than a century and a half, the Jewish religion, the profession of which had been frequently recognized by the legislature, was formally made legal by Act of Parliament.

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